RAJA GUPPAL RAMASAMY

v.

SAGARAN PAKIAM

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
AHMAD FAIRUZ JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: P-04-85-97]
27 NOVEMBER 1998

CIVIL PROCEDURE: *Appeal - Record of Appeal - Delay in filing - Application for extension of time - Delay due to non-compliance with Practice Direction No: 1 of 1996 - Whether an acceptable ground - Whether Practice Direction must be strictly adhered to - Whether grounds of judgment should have been filed as an additional record of appeal - Whether respondent would be prejudiced*

The appellant applied for an extension of time to file his record of appeal. According to r. 18(7) of the Rules of the Court of Appeal 1994 ('the Rules'), the record of appeal shall be filed within six weeks after the entry of the appeal.

Pursuant to Practice Direction No: 1 of 1996 ('the Practice Direction'), an appellant who has not been provided with the notes of evidence within one month from the date of filing the notice of appeal shall immediately apply to the President of the Court of Appeal for an extension of time to file his record of appeal.

Here, the appellant filed his appeal on 7 November 1997 and was provided with the notes of evidence on 10 December 1997, but not the grounds of judgment. His solicitor erroneously wrote to the Registrar of the Court of Appeal for an extension of time on 4 December 1997, and then to the President of the Court of Appeal on 16 December 1997 but this letter itself did not comply with paras (2) and (3) of the Practice Direction.

Held:

Per Haidar Mohd Noor JCA

[1] The Practice Direction is to regulate the procedure governing the filing of appeal records and must be strictly adhered to so that there is a systematic and consistent procedure in respect thereof.

[2] It was clearly an error on the solicitor's part to contend that the grounds of judgment were required to prepare the memorandum of appeal for inclusion in the record of appeal. Para (5) of the Practice Direction clearly allows for the grounds of judgment to be filed as an additional record of appeal.

[3] The court can take into account the mistake of the solicitor when deciding whether to grant an extension of time. Here, the conduct of the appellant's solicitor in not complying with the Practice Direction could hardly be described as an acceptable explanation for the delay.

[4] The appellant's solicitor did not allude to any facts or law to show that the application would not prejudice the respondent.

[Application dismissed with costs.]

Case(s) referred to:
Ling Siok Seng v. Ting Sieh Chung [1998] 4 CLJ 169 ***(foll)***
Ng Yit Seng & Anor v. Syarikat Jiwa Mentakab Sdn Bhd & Ors [1981] 2 MLJ 195 ***(refd)***
Pearson v. Chen Chien Wen Edwin [1991] 3 MLJ 208 ***(refd)***
Soh Keng Hian v. American International Assurance Co Ltd [1996] 2 CLJ 449 ***(aff)***
Yeo Yoo Teik v. Jemaah Pengadilan Sewa Pulau Pinang & Anor [1996] 2 CLJ 628 ***(foll)***

Legislation referred to:
Rules of the Court of Appeal 1994, r. 18(7)

Other source(s) referred to:
Practice Direction No: 1 of 1996

For the appellant - Sumita Kaur Sandhu; M/s Ajmer, Sandhu & Ong
For the respondent - Brijnandan Singh Bhar; M/s Brijnandan Singh Bhar & Co

[Appeal from High Court, Pulau Pinang; Civil Appeal No: 12-45-1997]

Reported by Anne Khoo

JUDGMENT

Haidar Mohd Noor JCA:

In this application the appellant prayed for an order for extension of time for him to file the record of appeal pursuant to r. 18(7) of the Rules of the Court of Appeal 1994 ("the Rules") which reads:

> The memorandum and copies above referred to which, together shall be called the record of appeal shall be filed at the Registry within six weeks after the entry of the appeal or within such further time as the Court may allow.

In support of the application, the solicitor for the appellant filed an affidavit setting out the grounds for the delay. In essence, the delay is grounded on:

(1) non-compliance with the Practice Direction No. 1 of 1996 dated 5 February 1996 issued by the President of the Court of Appeal;

(2) would not prejudice the respondent.

The respondent objected to the application.

Non-compliance With Practice Direction No: 1 Of 1996

On 13 October 1997, the learned High Court judge dismissed the appeal of the appellant against the judgment of the lower court on liability and quantum. It is a running down action.

On 7 November 1997, the appellant filed notice of appeal against the decision of the learned High Court judge.

On 10 December 1997, the appellant was provided with the notes of evidence but not the grounds of judgment of the learned High Court judge.

As the appellant was not provided with the notes of evidence within one month from the date the notice of appeal was filed after making the necessary application for same, the appellant should immediately, in accordance to para. (1) of the Practice Direction No. 1 of 1996, apply to the President of the Court of Appeal for extension of time to file the record of appeal.

Instead of writing to the President of the Court of Appeal for extension of time as stipulated under para. (1) of the Practice Direction No. 1 of 1996 the appellant's solicitor wrote a letter dated 4 December 1996 (exh. "SKS-2") to the registrar of the Court of Appeal for extension of time to file the record of appeal. Quite naturally there was no response from the registrar of the Court of Appeal to the letter of 4 December 1997 from the appellant's solicitor.

The appellant's solicitor subsequently wrote a letter dated 16 December 1997 to the President of the Court of Appeal applying for extension of time to file the record of appeal. This letter itself had not complied with paras. (2) and (3) of the Practice Direction No. 1 of 1996. Be that as it may, the appellant's solicitor was advised to comply with the Practice Direction No. 1 of 1996 (see exh. "SKS-3"). It is clearly erroneous on the part of the appellant's solicitor to contend the need to have the grounds of judgment in order to prepare the memorandum of appeal for inclusion in the record of appeal when

para. (5) of the Practice Direction No. 1 of 1996 clearly allows for the grounds of judgment to be filed as an additional record of appeal without the necessity of filing an application. As a result there was a delay in filing the record of appeal.

Practice Direction No. 1 of 1996 has been framed to regulate the procedure governing the filing of appeal records. It must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records. It was so emphasised by this court in *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628; [1996] 2 MLJ 54 and quoted with approval recently by this court in another case, *Ling Siok Seng v. Ting Sieh Chung* [1998] 4 CLJ 169. The conduct of the appellant's solicitor in not complying with the Practice Direction No. 1 of 1996 can hardly be described as an acceptable explanation for the delay.

As stated by this court in *Soh Keng Hian v. American International Assurance Co. Ltd* [1996] 2 CLJ 449; [1996] 1 MLJ 191 at p. 194, the mistake of a solicitor is a factor which the court may now take into account when deciding whether to grant an extension of time. Though *Soh Keng Hian's* case relates to extension of time to file notice of appeal, we are of the view that the same should apply to application for extension of time to file record of appeal as it relates to the exercise of the discretionary power of the court.

On this ground alone we should be slow to exercise our discretion in granting the extension.

Would Not Prejudice The Respondent

Quite apart from the statement that if the application is allowed, it would not prejudice the respondent, the appellant's solicitor did not allude to some facts or law in the affidavit in support so as to show at least an arguable case (see *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor, supra*, at p. 56, and *Pearson v. Chen Chien Wen Edwin* [1991] 3 MLJ 208.)

No doubt we were advised that at the date of the hearing of this application the record of appeal had been filed on 21 January 1998 and served on the respondent on 23 January 1998, for the reasons stated we were of the view that there were no sufficient good grounds for us to exercise our discretion to extend time.

The application was dismissed with costs.

By way of postscript, we quote "it is time the litigants and their legal advisers realise and appreciate that rules are made to be observed and complied with and not flouted or wantonly ignored *ad libitum*" per Abdoolcader J, in dealing with the failure of the appellant to comply with the statutory provision requiring service of the copy of the record of appeal on the respondents or their solicitors in the Federal Court case of *Ng Yit Seng & Anor v. Syarikat Jiwa Mentakab Sdn. Bhd & Ors* [1981] 2 MLJ at p. 195.